

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**SANTIAGO MARTINEZ,**

**Defendant.**

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**No. CR 1:21-01934-001 MV**

**DEFENDANT'S OPPOSED MOTION TO  
MODIFY CONDITIONS OF RELEASE**

**COMES NOW**, Defendant, Santiago Martinez, by and through his attorney of record Assistant Federal Defender, Devon M. Fooks, and pursuant to 18 U.S.C. § 3142(c) hereby moves this Court to modify Mr. Martinez' conditions of release and allow Mr. Martinez to move out of the La Pasada Halfway House and move into an apartment in Albuquerque, New Mexico while the case is pending.

**INTRODUCTION**

Mr. Martinez is accused of killing his girlfriend, Jane Doe, of many years on November 13, 2021. Despite the fact that the incident is alleged to have occurred on November 13, 2021, law enforcement did not arrest Mr. Martinez on that day while he was at the scene. Law enforcement interviewed Mr. Martinez on November 13, 2021, and served a search warrant on his cell phone on November 19, 2021. On November 22, 2021, law enforcement conducted an interview of Mr. Martinez. Mr. Martinez never admits to having done anything to Jane Doe and states repeatedly that he does not remember what happened. There are no other witnesses to the incident. The closest

neighbors heard no argument that evening. Law enforcement arrested Mr. Martinez on or about November 23, 2021.

On November 30, 2021, the Honorable Steven Yarborough ordered that Mr. Martinez be detained while his case is pending. Judge Yarborough found by clear and convincing evidence that no condition or combination of conditions of release would reasonably assure the safety of any other person and the community. [Doc. 16] Judge Yarborough based his ruling on his belief that the strength of the evidence in the matter is strong, the fact that Mr. Martinez is facing a potentially lengthy sentence if convicted and on Mr. Martinez' alleged history of alcohol abuse.

On September 29, 2022, counsel for Mr. Martinez filed an appeal of Judge Yarborough's detention order. [Doc. 37] On October 31, 2022, after a hearing on the matter, Judge Vázquez issued an order requiring Mr. Martinez to reside at the La Pasada Halfway house while the case is pending. [Doc. 47] Mr. Martinez has been residing at the halfway house since November of 2022.

### **ARGUMENT**

Mr. Martinez has proven over 16 months that he is neither a flight risk nor a danger to the community. Since his release Mr. Martinez has been an exemplary resident at the halfway house. Apart from one instance where Mr. Martinez strayed from his path home from work Mr. Martinez has complied with all of the conditions of the halfway house and all of the conditions that probation and Judge Vázquez placed upon him. He has had no contact with law enforcement and has had no problems with other residents at the halfway house.

Mr. Martinez has been gainfully employed the entire time he has lived at the halfway house with the exception of several months where he could not work due to a work-related injury. Despite the injury and the time off, Mr. Martinez has saved almost \$2000.00 towards rent and deposit.

The weight of the evidence in Mr. Martinez' case is very weak. There are no witnesses to the event that led to Jane Doe's death. The only version of the events that transpired that night comes

from Mr. Martinez during his interviews with law enforcement. Mr. Martinez explained to law enforcement that he and Jane Doe had finished dinner and were drinking beer and smoking marijuana. They went to their vehicle that was parked in the driveway where they were listening to music and drinking beer. At some point during the evening Mr. Martinez went back inside the house to throw more wood on the fire they had going inside the house. Jane Doe stayed in the car. Once inside, Mr. Martinez either blacked out or passed out. When he awoke, he went back outside to find Jane Doe unconscious and under the wheel of the car with the car door open.

Upon finding Jane Doe, Mr. Martinez called his family in hysterics. His family lived approximately 300 yards away from Mr. Martinez. A family member contacted 911. Emergency services arrived, they attempted to revive Jane Doe but their efforts were unsuccessful. Law enforcement noted that Mr. Martinez was distraught while they were on scene. Mr. Martinez was not arrested that day. The incident is alleged to have occurred on November 13, 2021. Law enforcement arrested Mr. Martinez ten days later on November 23rd. During that time, Mr. Martinez remained at home on the Pueblo.

An autopsy of Jane Doe revealed that she had a blood alcohol content of almost twice the legal driving limit, .158 mg/dl. The autopsy listed the cause of death as mechanical asphyxia and blunt force trauma. She had injuries to her head and neck and to her ear where a large ornamental ear decoration was torn from her ear lobe. Her torso had abrasions on the back and front and she had three fractured ribs and a lung contusion. It is unclear if the fractures or some of the other injuries were caused by resuscitation efforts. A search of the scene also found blood inside the car on the driver's side door. There is no evidence which indicates whose blood it was. Law enforcement noted that Mr. Martinez had injuries to his hands.

There is no other physical evidence that can tell this Court what happened that evening. The neighbors did not hear any fighting that night. There is no definitive evidence that there was an

argument between Mr. Martinez and Jane Doe. The injuries to Jane Doe's ear and hands and injuries to Mr. Martinez's hands could indicate that there was a fight that occurred, but the evidence is not definitive. Mr. Martinez had abrasions to his hands, but he also admitted to punching the ground because he was distraught. Jane Doe had abrasions to her hands as well, but it is unclear if they were caused by the death event or by fighting with Mr. Martinez. There is no indication that Mr. Martinez had any injuries to his face or body that would be consistent with having been in a fight with Jane Doe. Quite simply there is no way to know what happened that evening.

The parties have been litigating the case since late 2021. During the course of the litigation, Judge Vázquez granted defendant's motion to suppress statements made by Mr. Martinez after he submitted to a polygraph. [Doc. 121] Judge Vázquez also denied the government's motions in limine to admit evidence of an alleged fight between Mr. Martinez and Jane Doe. [Doc. 125] Mr. Martinez insists that such a fight never occurred. Judge Vázquez also denied the government's motion in limine to admit transcripts of text messages between Mr. Martinez and Jane Doe. [Doc. 125].

On December 5, 2023, six days prior to the start of trial the government filed a Notice of Intent to File a Notice of Appeal. [Doc. 126] On December 13, 2022 and January 3, 2023, the government filed Notices of Appeal appealing all three of Judge Vázquez' rulings.

As of the filing of this motion the government still has not filed its opening brief and filed an unopposed motion to extend time to do so. *United States v. Martinez*, 23-2193, Doc. 010111005787. Accordingly, the briefing of the issues is delayed, and it seems unlikely that the Court of Appeals will rule on the matter in the near future. Without the suppressed evidence and the exclusion of evidence of the alleged fight and text messages, the government's case which was not particularly strong to begin with is weakened even further. The government's appeal will cause a relatively lengthy delay in the trial.

Mr. Martinez recently secured an apartment rental in downtown Albuquerque, New Mexico. If this motion is granted Mr. Martinez can move into the apartment on or about March 29, 2024.

Assistant United States Attorney Zach Jones **OPPOSES** this motion.

United States Probation Officer Anthony Carter **DOS NOT OPPOSE** this motion.

### **CONCLUSION**

Mr. Martinez is neither a flight risk nor a danger to the public. He has a near perfect record of compliance while residing at La Pasada Halfway House. His case is not delayed for an unknown but sure to be a significant amount of time while the government appeals Judge Vázquez' orders. The orders have the effect of diminishing the weight of the evidence against Mr. Martinez.

**WHEREFORE**, Mr. Martinez respectfully requests that this Court modify his conditions of release to allow him to move out of the La Pasada Halfway house and live in an apartment while the case is pending.

Respectfully submitted,

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